

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

ABELINO HERNANDEZ

§

VS.

§

CIVIL ACTION NO. 9:19cv127

EMMANUEL EGWE, ET AL.

§

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Abelino Hernandez, an inmate formerly at the Polunsky Unit, proceeding *pro se* and *in forma pauperis*, brought the above-styled lawsuit pursuant to 42 U.S.C. § 1983.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed without prejudice pursuant to 28 U.S.C. as frivolous and for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record and pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the court concludes plaintiff's objections are without merit. Plaintiff claims defendant Egwe was responsible for packing his property following plaintiff's extraction from his cell, but Egwe told plaintiff's cell-mate to pack his property instead. As a result, plaintiff's property was ultimately stolen. However, the defendant's alleged failure to follow prison regulations, rules or procedures does not rise to the level of a constitutional violation. *Stanley v.*

Foster, 464 F.3d 565, 569 (5th Cir. 2006); *Hernandez v. Estelle*, 788 F.2d 1154, 1158 (5th Cir. 1986). Further, plaintiff has alleged no constitutional violation regarding his extraction from the cell. In the grievance attached to his complaint, plaintiff states that after he was told he could not pack his own property he “cuff[ed] up and complied with Sgt. McDonald.” Accordingly, plaintiff’s complaint is frivolous and fails to state a claim upon which relief may be granted.

O R D E R

Accordingly, plaintiff’s objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ACCEPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge’s recommendations.

So **ORDERED** and **SIGNED** February 19, 2020.



Ron Clark, Senior District Judge